

1 THE HONORABLE RICHARD A. JONES
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 ABDIQAFAR WAGAFE, *et al.*, on behalf
10 of themselves and others similarly situated,

11 Plaintiffs,
12
13 v.
14 DONALD TRUMP, President of the
United States, *et al.*,

Defendants.

No. 17-cv-00094 RAJ

**DECLARATION OF
DAVID A. PEREZ IN SUPPORT OF
PLAINTIFFS' SUBMISSION
REGARDING DISCOVERY DISPUTE
RELATING TO REQUESTS FOR
PRODUCTION 23 AND 24**

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DECLARATION OF DAVID A. PEREZ
(No. 17-cv-00094 RAJ) – 1

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1 I, David A. Perez, hereby declare:

2 1. I have personal knowledge of the facts stated below and am competent to testify
3 regarding the same. I am one of the attorneys for Plaintiffs in this matter, *Wagafe v. Trump*,
4 No. 17-cv-00094 RAJ.

5 2. Within minutes of receiving the Court's January 10, 2018 order (Dkt. 104),
6 Plaintiffs asked Defendants to schedule the meet and confer ordered by the Court to discuss
7 alternative custodians, non-custodial sources, and search terms for production of documents
8 responsive to Plaintiffs' Requests for Production Nos. 23 and 24. The Court ordered this meet
9 and confer to occur within 21-days of the Court's January 10 Order (by January 31), with a
10 document search and production to occur 10 and 30 days later, respectively. Plaintiffs asked
11 Defendants to schedule this meet and confer for Friday, January 19, a date which the parties
12 had already scheduled to confer about other discovery matters. Defendants insisted they were
13 not prepared to begin conferring until January 26, 2018.

14 3. During the parties' January 26 telephone conference, Defendants stated that they
15 were not in a position to offer the names of the alternative custodians they would propose for
16 RFPs 23 and 24. At times Defendants merely described certain custodians as "a high level
17 official" or a "subordinate overseeing the program," and asked Plaintiffs to agree to such
18 custodians based on these descriptions. Defendants offered only that they were considering as
19 custodians USCIS personnel that are overseeing the implementation of the "extreme vetting"
20 program(s) created pursuant to the executive orders.

21 4. On the issue of search terms, on January 26 Defendants proposed using three
22 search terms: "13769," "13780," and "extreme vetting." Defendants represented that they
23 would include other search terms that corresponded to the title and common usage terms of the
24 extreme vetting programs being implemented, but could not provide a list of these terms.

25 5. On the issue of date range, Defendants took the position that the collection should
26 begin on January 27, 2016—the date the first Executive Order was signed.

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1 6. Following the January 26 call, Defendants memorialized their position in an e-
2 mail outlining the search terms, date range, and custodians Defendants proposed for each
3 request for production. Plaintiffs responded to Defendants with an e-mail detailing a full list of
4 proposed custodians, search terms, and date ranges for both requests for production. Attached
5 as **EXHIBIT 1** is a true and correct copy of this e-mail exchange between myself and Joseph
6 Carilli ranging from January 26, 2018 to January 29, 2018.

7 7. The parties scheduled a follow up meet and confer for January 31, 2018, which
8 was the day of the Court's deadline. Thirty minutes before the call, Defendants sent a letter to
9 Plaintiffs, outlining their objections to Plaintiffs' proposed search terms and custodians.
10 Attached as **EXHIBIT 2** is a true and correct copy of this January 31, 2018 letter from Joseph
11 Carilli to Plaintiffs' counsel.

12 8. During the January 31 call, Plaintiffs detailed their objections to Defendants'
13 latest proposed search terms and custodians. The parties were at an impasse on several issues,
14 including search terms for RFP 23 and the appropriate custodians for both RFPs. Though
15 Defendants agreed to apply Plaintiffs' requested date range of November 9, 2016 (date that the
16 transition began) to present, Defendants would limit the date range for each custodian to the
17 time when that custodian either began working at the respective agency or began working on
18 the issues—even if earlier documents were available. Additionally, Defendants were not in a
19 position to say whether they would agree to search for presidential transition e-mails or
20 whether they would agree to apply a search term string Plaintiffs proposed for RFP 24. At the
21 conclusion of the call, Defendants informed Plaintiffs that while the parties continued to
22 discuss these open issues, they planned to proceed to collect documents using only the terms,
23 custodians, and date ranges that Defendants had proposed. Plaintiffs informed Defendants that
24 they would ask the Court for a hearing to discuss these issues.

25 9. On February 2, 2018, Defendants agreed to add a few of the custodians Plaintiffs
26 had requested, and proposed additional search terms to be run against one custodian. Attached

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1 as **EXHIBIT 3** is a true and correct copy of this February 2, 2018 email from Ed White to
2 Plaintiffs' counsel, along with the parties' follow-on correspondence through February 5.

3 10. Attached as **EXHIBIT 4** is a true and correct copy of a document obtained by
4 Plaintiffs under the Freedom of Information Act (FOIA) and produced by Plaintiffs in this case
5 as Plaintiffs-FOIA 003192. This is an example of a document referencing CARRP without
6 using the term CARRP; a search term limited to CARRP would not have picked up this
7 document.

8 11. Attached as **EXHIBIT 5** is a true and correct copy of a document obtained by
9 Plaintiffs under the Freedom of Information Act (FOIA) and produced by Plaintiffs in this case
10 as Plaintiffs -FOIA 003500. This is an example of a document referencing CARRP without
11 using the term CARRP; a search term limited to CARRP would not have picked up this
12 document.

13 12. Attached as **EXHIBIT 6** is a true and correct copy of a document obtained by
14 Plaintiffs under the Freedom of Information Act (FOIA) and produced by Plaintiffs in this case
15 as Plaintiffs -FOIA 003538. This is an example of a document referencing CARRP without
16 using the term CARRP; a search term limited to CARRP would not have picked up this
17 document.

18 13. Attached as **EXHIBIT 7** is a true and correct copy of a document obtained by
19 Plaintiffs under the Freedom of Information Act (FOIA) and produced by Plaintiffs in this case
20 as Plaintiffs -FOIA 003573. This is an example of a document referencing CARRP without
21 using the term CARRP; a search term limited to CARRP would not have picked up this
22 document.

23 14. Attached as **EXHIBIT 8** is a true and correct copy of ICE-HIS, "Extreme Vetting
24 Initiative: STATEMENT OF OBJECTIVES (SOO)," June 12, 2017, available at
25 FedBizOpps.gov.

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DECLARATION OF DAVID A. PEREZ
(No. 17-cv-00094 RAJ) – 3

1 EXECUTED this 6th day of February, 2018, at Seattle, Washington.

2 /s/ David A. Perez
3 David A. Perez
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DECLARATION OF DAVID A. PEREZ
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CERTIFICATE OF SERVICE

The undersigned certifies that on the date indicated below, I caused service of the foregoing DECLARATION OF DAVID A. PEREZ IN SUPPORT OF PLAINTIFFS' SUBMISSION REGARDING DISCOVERY DISPUTE RELATING TO REQUESTS FOR PRODUCTION 23 AND 24 via the CM/ECF system that will automatically send notice of such filing to all counsel of record herein.

DATED this 6th day of February, 2018, at Seattle, Washington.

By: s/ David A. Perez
David A. Perez #43959
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**CERTIFICATE OF SERVICE
(No. 17-cv-00094 RAJ) – 1**

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